IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3674 of 2005
With
FIRST APPEAL No.3675 of 2005
To
FIRST APPEAL No.3696 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER - Appellant
Versus
RAJABHAI AMARSHIBHAI & ANOTHER - Respondents

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Appearance :
MR RC KODEKAR, AGP for Appellant in each Appeal.
MR AJ PATEL for Respondent No.1 – Original Claimant in each Appeal.
MR AD OZA for Respondent No.2 in each Appeal.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 20/04/2006

COMMON ORAL JUDGMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted.

Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the appellant No.1-original claimant in each appeal. Mr.A.D.Oza, learned counsel, waives

service of notice on behalf of the respondent No.2 in each appeal. The Registry is directed to accept appearance of learned counsel Mr.A.D.Oza, which may be filed by him on behalf of the respondent No.2. Having regard to the facts of the case, all the appeals are taken up for final disposal today.

2. By filing the abovenumbered appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the Special Land Acquisition Officer, Narmada Project Unit-3, Ahmedabad, has challenged legality of the common judgment and award dated November 12, 2002 rendered by the learned Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.1696 of 1996 to 1718 of 1996, by which the claimants are awarded additional compensation at the rate of Rs.13/- per square meter over and above the compensation already awarded by the Special Land Acquisition Officer together with 30% solatium and running interest at the rate of 9% per annum for the period of one year from the date of taking over the possession of the acquired land and thereafter at the rate of 15% per annum on aggregated amount including

solatium till the entire amount is fully paid or deposited.

3. The Executive Engineer, Narmada Yojna, Division No.2/2, Viramgam, proposed to the State Government to acquire the lands of Village: Jakhvada, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On scrutiny of the proposal, the State Government was satisfied that the lands of Village: Jakhvada were likely to be needed for the purpose of construction of Narmada Canal. Therefore, the State Government issued notification under Section 4 of the Act and published in the Government Gazette on August 29, 1991. Those, who were opposed to the proposed acquisition, filed their objections. After considering the objections, the Special Land Acquisition Officer forwarded his report to the State Government as required by Section 5-A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village: Jakhvada mentioned in the notification published under Section 4 of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, notification under Section 6 of the Act was issued, which was

published in the Government Gazette on December 31, 1991. The interested persons were thereafter served with the notices for determining the compensation. The claimants appeared before the Land Acquisition Officer and claimed the compensation at the rate of Rs.40/- per square meter, but having regard to the materials placed before him, the Land Acquisition Officer, by his award dated December 29, 1993, offered compensation at the rate of Rs.1.80 paise per square meter. The claimants were of the opinion that the offer of the compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of market price of the land. Accordingly, the references were made to the District Court, Ahmedabad, which were numbered as Land Acquisition Case Nos.1696 of 1996 to 1718 of 1996. Before the Reference Court, the claimant claimed compensation at the rate of Rs.40/- per square meter for their acquired lands on the basis that Village: Jakhvada had all the facilities such as; Milk Cooperative Society, High School, Primary School, Hospital, Bus-Station, Roads, Telephones, etc. The Special Land Acquisition Officer contested the claim of the claimants by filing reply at

Exh.13. On behalf of the claimants, witness Tarshibhai Shankerbhai Prajapati was examined at Exh.45, who produced documentary evidence in support of the claim advanced in the Reference Applications. On behalf of the respondent No.2, i.e. the Executive Engineer, Narmada Yojna, Viramgam, two witnesses were examined.

4. The Reference Court, on appreciation of the evidence, was of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. The Reference Court further held that the previous award rendered by the Reference Court in Land Acquisition Case No.714 of 1986 relating to the lands of Village: Jakhvada was relevant for the purpose of determining the market value of the lands acquired in the instant cases and, therefore, the claimants were entitled to enhanced compensation. In view of the said conclusion, the learned Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural), has awarded the additional compensation as noticed earlier, giving rise to the abovenumbered appeals.

5. This Court has heard Mr.R.C.Kodekar, learned Assistant Government Pleader appearing for the appellant

in each appeal as well as Mr.A.J.Patel, learned counsel appearing for the claimant(s) in each appeal and Mr.A.D.Oza, learned counsel appearing for the respondent No.2 in each appeal, at length and in great detail. This Court has also considered the evidence adduced by the parties.

6. During the course of hearing of the appeals, the learned counsel appearing for the claimants, has brought to the notice of the Court the judgment dated May 13, 2005 rendered by the Division Bench of this Court comprising B.J.Shethna & M.C.Patel, JJ. in First Appeal Nos.1154 to 2005 to 1167 of 2005 by which for the lands acquired from Village: Jakhvada, pursuant to notification under Section 4 of the Act, which was published in Government Gazette on August 29, 1991, the claimants were awarded the total compensation at the rate of Rs.11.90 paise per square meter.

7. The learned counsels appearing for the parties have agreed and stated before the Court that in view of the judgment dated May 13, 2005 delivered by the Division Bench of this Court in First Appeal Nos.1154 of 2005 to 1167 of 2005 relating to the lands of this very village

pursuant to the notification under Section 4 of the Act of the same date, which is not challenged by anyone before the higher forum, the impugned award passed by the Reference Court be modified by directing that all the claimants would be entitled to total compensation of Rs.11.90 paise per square meter and rest of the judgment and award passed by the Reference Court be confirmed. Over and above the statement made at the Bar by the learned counsels for the parties, this Court has considered the judgment of the High Court delivered in First Appeal Nos.1154 of 2005 to 1167 of 2005 on May 13, 2005. A perusal of the same makes it clear that the Court was dealing with the question of grant of compensation to the claimants whose lands situate at Village: Jakhvada were acquired pursuant to the publication of notification under Section 4 of the Act on August 29, 1991. The High Court on consideration of evidence, has awarded compensation at the rate of Rs.11.90 paise per square meter. That judgment is not challenged before the higher forum. Thus, the earlier judgment of the High Court furnishes guidance for fixing the market price of the lands, which are subject matter of the abovenumbered appeals. On the facts and in the circumstances of the case, this Court is of the opinion that the claimants

would be entitled to compensation in all at the rate of Rs.11.90 paise per square meter and, therefore, the appeals will have to be allowed in part.

8. For the foregoing reasons, the appeals partly succeed. It is held that the claimants would be entitled to total compensation at the rate of Rs.11.90 paise per square as well as all statutory benefits and to that extent the impugned award stands modified. The rest of the judgment and award passed by the Reference Court impugned in the appeals, is not disturbed at all. The appeals are partly allowed to the extent indicated hereinabove. There shall be no orders as to costs. The decree be drawn accordingly.

[J.M.PANCHAL, J.]

[BANKIM N. MEHTA, J.]

Rajendra